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SUBJECT: KUWAIT: COMMENTS FOR 2008 SPECIAL 301 REVIEW

REF: A. STATE 9475

[1](#)B. 07 KUWAIT 1768

[1](#)1. (SBU) Kuwaiti government agencies significantly improved the level of IPR enforcement activity in 2007 compared to activities in 2006. Kuwait Customs in particular continued to be the most aggressive and most competent agency in impeding the movement of pirated and counterfeit products. Protecting IPR remains a priority at the ministerial level and inspection teams from the Ministries of Commerce and Information, and Kuwait Customs have continued to conduct regular raids and seizures.

[1](#)2. (SBU) As in past years, the division of responsibility for IPR protection among the Ministries of Information and Commerce and Kuwait Customs continued to cause problems with unclear jurisdictional boundaries and inadequate information sharing. In September 2007, the GOK announced that copyright protection responsibility had officially moved out of the Ministry of Information (MOI) and all IPR enforcement functions (other than Customs) had been consolidated into the Ministry of Commerce and Industry (MOCI), which previously held responsibility only for trademarks. This move has been a step in the right direction but it is too early to see how well it is going to work in practice. The move has not been smooth or easy and several elements of enforcement have yet to make their final move into the Ministry of Commerce. Despite the move and uncertainty associated with it, the Ministry of Information continued to conduct raids and inspections throughout the year.

[1](#)3. (SBU) Although Kuwait's copyright law remains TRIPS-non-compliant and weak penalties for violators make enforcement efforts toothless in many cases, Kuwait's enforcement efforts, especially in Customs, were significantly improved in 2007. Due to the delays in passing TRIPS-compliant copyright law, post recommends that Kuwait remain on the Special 301 Watchlist. We are encouraged by the commitment, at the ministerial level, to IPR enforcement and by an increased willingness to prosecute violators, but remain frustrated at the slow pace of movement on key legislation. MOCI, MOI and Customs have made IPR enforcement a high priority, but the delay by the Cabinet Council in forwarding IPR legislation to the Parliament indicates that IPR protection is not a high priority for the GOK as a whole.

We expect that the consolidation within the Ministry of Commerce will lead to further improvements in enforcement, but the true test of the GOK's commitment to IPR will be to pass the long-delayed TRIPS-compliant copyright law. In the 2008 Special 301 Report, Post encourages USTR to commend Kuwait's enforcement personnel, particularly Kuwait Customs, and to focus heavily on the need to pass the relevant legislation, a point noted in the just-concluded third round of TIFA negotiations held in Kuwait on February 14 (see para 12).

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Optical Media Piracy  
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¶4. (SBU) The copyright industry claims that Kuwait's optical media piracy rate is around 90 percent, although the Ministry of Information disputes this figure. The Ministry of Information, however, does not compile its own statistics. Pirated optical media is imported into Kuwait in large quantities, but is also produced locally, as evidenced by several busts in which high-speed CD/DVD duplicating equipment was recovered. Post has noticed a significant reduction in the number of vendors selling pirated DVDs, software and video games on the streets or in shops. Due to the increase in the number of raids conducted by MOI and Customs, vendors have been forced to sell from residential locations like apartments and houses. Some shops continue to keep pirated DVDs, CDs and video games in backrooms and offer pirated material only upon request. This is a significant change from previous years.

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Use/Procurement of Government Software  
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¶5. (SBU) According to the Business Software Alliance and the ME Computer Software Producers Society, software piracy in Kuwait is around 64 percent. MOI does not have statistics on software piracy and post believes that private sector assessment in this case is accurate. GOK interlocutors assure us that pirated software is not allowed in any government ministry or office. Ministry of Information and Ministry of Planning officials affirm that they use only

KUWAIT 00000211 002 OF 004

licensed and authenticated software on government computers. MOI claims that its networks are monitored by an IT supervision center which does not permit any unlicensed software to be installed on its network systems. However, post has received complaints from several U.S. companies claiming software infringement by GOK ministries, especially the Ministry of Planning.

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TRIPS Compliance  
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¶6. (SBU) Kuwait's 1999 copyright law is not TRIPS-compliant. The Ministry of Information has drafted extensive amendments to the law, which it believes will bring the law into conformity with international standards. As part of the TIFA process, USG experts have reviewed the 1999 law and have provided feedback for the Kuwaitis' consideration. In September 2006, the Kuwaiti delegation to the TIFA meeting in Washington, DC provided a copy of the draft amendments to USTR. In January 2008, USG comments were sent to the GOK based on amendments sent to Washington in August 2007. In a TIFA council meeting on February 14, an MOI legal expert responsible for drafting the amendments affirmed that all USG comments have been reviewed and incorporated into the amendments. He explained that the completed amendments have been sent to the Cabinet Council for review and will be moved to the Parliament for a vote in the next two months.

¶7. (SBU) In 2004, the Ministry of Information submitted draft legislation to increase penalties for IPR violators. This law is still pending at the Cabinet Council and awaiting submission to the Parliament. According to MOI, this law is also expected to be considered by the Parliament in the next couple of months. The new law sets minimum penalties that include mandatory jail sentences. According to our interlocutors, as in 2006, all raids in 2007 resulted in cases being referred to prosecution. Penalties are still weak, however, and the judiciary has yet to show a consistent willingness to sentence violators to time in jail. Post

continues to believe that weak penalties, which usually consist of just a fine (up to \$1,700) and rarely include jail time, are a major contributing factor to the government's failure to deter vendors of pirated and counterfeit goods.

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Enforcement  
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¶8. (SBU) Lack of inter-ministerial cooperation, which has long been the most limiting factor for enforcing IPR in Kuwait, improved slightly in 2007 due to the consolidation of IPR responsibility within MOCI. The inter-ministerial IPR committee, chaired by the Ministry of Commerce, has made information sharing somewhat more efficient, although problems remain. MOI interlocutors complain, however, that coordination is still difficult and cumbersome. In general, enforcement remains hampered by an unwillingness to prosecute Kuwaiti citizens who run piracy rings, with prosecution usually reserved for foreign nationals who work for Kuwaitis.

In most cases dealing with piracy, the sentences are usually around 100 KD to 500 KD (350 USD to 1750 USD). Most violators consider such minor penalties to be part of the cost of doing business. Businesses that are closed down for IPR violations often quickly reopen and return to selling the same products.

¶9. (SBU) Trademark infringement is a growing concern, particularly with the office at the Commerce Ministry responsible for researching and registering trademark applications. Valid Kuwaiti registrations can be obtained for applications that clearly violate an existing trademark or trade dress, as long as no complaints are received over a 30-day period in which the mark is displayed in a local newspaper. Once a trademark is registered locally, it is difficult to rescind even after a complaint is made as the aggrieved party must go to court to resolve the issue. A secondary effect of this weak registration process is that Kuwait Customs is periodically forced to release products that clearly violate an existing trademark because the importer holds a valid Kuwaiti registration for the infringing mark.

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Kuwait Customs  
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¶10. (SBU) In 2007, Kuwait Customs continued to be the most aggressive and effective agency enforcing IPR. The U.S.

KUWAIT 00000211 003 OF 004

Customs advisory team, which has worked closely with Kuwait Customs since its creation in 2003-2004 and is physically located within Kuwait Customs offices, has developed a close and productive relationship with the IPR team at Customs, and much of Kuwait Customs' progress over the last few years can be directly attributed to this partnership. Kuwait Customs employs a complex tracking system to catalogue seizures and the disposition of each case; depending on the circumstance, dispositions can be a referral to the prosecutors office, penalties imposed on the spot, and confiscation and destruction of goods. Customs seizures include a wide variety of pirated and counterfeit goods, including clothing, toys, watches, optical media, and automobile parts. For a first-time seizure, Customs allows the re-export of seized counterfeit goods, which violates international customs commitments, although all seized optical media are destroyed.

If the same or similar goods are seized a second time, Customs destroys the confiscated products after 90 days so long as the importer does not appeal the seizure to the courts. Some IP rights holders have agreed to absorb the costs of destruction in order to avoid the goods being re-exported.

¶11. (SBU) In a recent meeting with Econoff, Director General of Customs Ibrahim Al-Ghanim reiterated Customs' commitment

to protecting IPR. He provided us with a detailed 2007 Customs-IPR report, which outlined the work Customs IPR units have done in the last year. The report stated that seizures by Customs IPR units in 2007 totaled 538 cases with a total value of 1.7 million USD. This is a significant increase from 2006 when Kuwait Customs recorded 313 seizures at ports of entry. Not only have the number of seizures increased, the quality and quantity of seizures have also increased significantly in the last year. Al-Ghanim also informed us that the combined IPR committee that includes members from MOI, MOCI, Ministry of Justice, Ministry of Interior and Customs has also stepped up raids and inspections in local shops and commercial areas. This has resulted in a dramatic decline in number of peddlers selling counterfeit or pirated goods on the streets. According to Customs officials, IPR violators have resorted to using children to sell counterfeit products to avoid attracting attention from the IPR units. Further evidence of Customs' improvement is that many importers now approach Customs with examples of products they intend to import, and asking for an assessment of the products' legitimacy before placing orders in an effort to avoid IPR problems on arrival.

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Ministry of Commerce and Industry  
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¶12. (SBU) The Ministry of Commerce became more active in IPR protection after the signing of the Trade and Investment Framework Agreement in 2004. The Minister is the head of Kuwait's TIFA delegation and the Ministry is charged with heading the inter-ministerial IPR committee to oversee and coordinate all enforcement efforts. The Under Secretary of Commerce and Industry, Rasheed al-Tabtabaei led the latest round of TIFA council meetings in Kuwait on February 14. IPR enforcement and legislation was discussed in great detail during this session. As a result of the TIFA process, the Ministry has made IPR enforcement a high priority in the Ministry. Amending the Copyright Law has also been made a high priority. MOCI blames parliamentary politics for lack of movement or slow movement on legislation. With the move of the copyright enforcement unit to MOCI, copyright and trademark inspections and raids should see significant improvement. Although the copyright office has moved to MOCI, bureaucratic details like budget, office space and personnel still remain to be worked out before the office can be fully functional with MOCI. Prior to the move, MOCI lacked the statutory authority to seize products that were openly sold as counterfeit. With added enforcement authority and jurisdiction over broad range of IPR issues, the new MOCI IPR units should be more effective and efficient.

Ministry of Information  
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¶13. (SBU) The Ministry of Information's performance in 2007 was significantly improved compared to 2006. In September 2007, copyright enforcement authority was officially moved from MOI to MOCI. Post sees this as a positive step since MOI enforcement was the weakest link in the GOK enforcement regime. This move not only eliminates problems related to coordination and information sharing between MOCI and MOI, it also allows MOCI to consolidate its trademark and copyright enforcement efforts. In 2007, MOI increased expanded its

KUWAIT 00000211 004 OF 004

enforcement team from 15 members in 2006 to more than 50 in ¶2007. According to MOI officials, the Ministry had plans to increase its enforcement staff to 250 in the next few years. The copyright office and its inspectors have moved to the Ministry of Commerce and will work in conjunction with Commerce's trademark protection teams under a combined reporting hierarchy. Post was encouraged to learn that the copyright office has transferred largely intact, as the USG has invested considerable resources in training and developing its personnel over the years and plans to continue

to do so in 2008.

¶14. (SBU) In 2006, at Post's urging the inter-ministerial IPR committee began keeping records of enforcement activities for all offices holding IPR responsibility. This move has added a measure of accountability to inspection teams' activities and has resulted in more completed seizure reports from inspectors. Highlights from 2007 include the seizure of more 852,000 pirated optical media discs, which include CDs, DVDs, software and video games; and a total of 546 cases were referred for prosecution, up from 412 in 2006.

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WIPO Copyright Treaty and Performances and Phonograms Treaty  
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¶15. (U) Kuwait is not party to either treaty. However, in a TIFA council meeting on February 12, MOI legal consultant Fayez Al-Kandhari noted that Kuwait is interested in signing these treaties. He expects these treaties to be signed by the GOK in 2008.

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